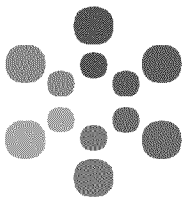

AmericanCoatings
ASSOCIATION℠

May 13, 2017

Ana Corado and Niva Kramek
Chemical Control Division
Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460–0001

RE: ACA Comments on Methylene Chloride and N-Methylpyrrolidone (NMP); Regulation of Certain Uses Under Toxic Substances Control Act (TSCA) Section 6(a); Docket # EPA–HQ–OPPT–2016–0231

Dear Ms. Corado and Ms. Kramek:

The American Coatings Association ("ACA") appreciates the opportunity to provide comments to the U.S. Environmental Protection Agency ("EPA" or "Agency") in response to the Toxic Substances Control Act ("TSCA") Methylene Chloride (MC) and N-Methylpyrrolidone (NMP) Rule.

ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

ACA's membership represents over 90% of the total domestic production of paints and coatings in the country. ACA represents companies that manufacture and distribute MeCl2 and NMP based Paint Strippers and Removers that will be impacted this rulemaking. Furthermore, as ACA member companies formulate many products that are subject to TSCA's provisions, this rulemaking is important since it will become precedent for future chemical restriction rulemakings.

Introduction

ACA suggests that the proposed rule is fundamentally flawed since EPA's proposal to ban MeCl2, and either ban or significantly restrict the use of NMP, will devastate industries and force consumers to choose between alternatives that are less effective; that can present health and environmental risks (that EPA has not assessed and underestimated); and that are more costly to use. It is very important to note that not only is EPA proposing to ban the most effective paint stripper available in the market - MeCl2, but also ban or significantly restrict the use of arguably the best replacement for MeCl2 - NMP. Further, this proposal would duplicate regulations that

are already in place, and therefore is not needed. The proposal also relies on scientifically and procedurally flawed risk assessment that violates Office of Management and Budget ("OMB") guidelines for major scientific rulemakings. EPA should withdraw this flawed proposal, and consider instead a more effective regulatory approach based on improved labeling and consumer education.

ACA appreciates that EPA has included a second option for NMP that would allow continued use with requirements for labeling and PPE: however while ACA supports this option, ACA does not support the 35% by weight standard for reformulations.

MeCl2 Ban and NMP Option 1 - Ban

There are no technically and economically feasible alternatives to MeCl2 and NMP Paint Removers. The alternative products result in increased ozone formation; are less effective; and result in greater exposure to consumers and employees

EPA has not adequately considered the environmental consequences as well as the risks to human health of the various regulatory alternatives. EPA's Alternatives Assessment incorrectly characterizes the performance benefits of alternative MeCl2 and NMP containing paint removal products, since technically and economically feasible alternatives to MeCl2 and NMP containing paint removers do not exist. EPA did not consider or has understated the risks from reliance on alternative products.

EPA's proposal to ban consumer use of MeCl2-containing paint removal products and either ban or significantly restrict the use of NMP, would lead to increased use of less effective products, including those which are more flammable than MeCl2 and NMP. If consumers are forced to use less effective products, consumers will need to use more of these alternative products for longer periods of time, increasing their exposure to these chemicals, and increasing the potential for releases to the environment. Alternative removers may be more flammable than MeCl2 and NMP, thereby increasing the risk of workers and especially consumers from fires and explosions. Further, alternative mechanical methods may increase risk of inhalation and ingestion from dusts and potential lead based paint.

EPA did not account for the fact that many of the alternatives to MeCl2 and NMP are more reactive from an ozone formation perspective and banning MeCl2 and NMP will likely increase groundlevel ozone and smog formation. EPA should rerun the alternatives assessment and account for increased ozone formation and associated increased health impacts. Subsequent applications and the use of mechanical abrasion may result in damage to soft or fragile substrates (for example antique furniture).

Increased use of these alternative chemicals will also increase costs to consumers, since many of these chemicals cost more and require multiple applications to be as effective as MeCl2 and NMP. Extra applications of alternatives also creates additional waste. Further, EPA did not take into account the health impacts of the use of alternative caustic paint removal products, which could be very hazardous to consumers and workers unless proper PPE is utilized. EPA conducted

a cost-benefit analysis that failed to consider the full costs of relying on less effective products, and that failed to follow OMB guidelines.

EPA has also not adequately assessed the costs and benefits of its proposed rule or of regulatory alternatives. EPA has understated the cost of the proposed Rule significantly. EPA has not properly determined the costs to businesses of abandoning both MeCl2 and NMP product lines, especially since EPA has not assessed the costs of reformulation; the cost of collecting and disposal of any stranded products and the cost of label changes as well as the time to complete these activities. Label changes can be very expensive depending on market, distributor network and channels. EPA also must assess and critically consider the costs to *consumers* of purchasing *and using* alternative paint and coating removal products. Further, EPA has not accounted for the economic impact to companies that formulate, distribute and sell MeCl2 and NMP paint removal products, and as result, these companies and workers could be devastated by the loss of revenue if these products are banned.

In the absence of technically and economically feasible alternatives to MeCl2-containing paint removers, EPA lacks a sufficient basis to proceed with a final Section 6(a) rule that would explicitly prohibit retail sales and consumer uses of MeCl2- and NMP-containing paint removal products.

Duplicative Regulation

TSCA requires EPA to consult and coordinate with other federal agencies to minimize the burdens of duplicative requirements on those subject to the Act. Existing federal, state and local requirements already provide strong protections against MeCl2 exposures and emissions. Worker and consumer health and safety fall under the jurisdictions, respectively, of the federal Occupational Safety and Health Administration (OSHA) and the federal Consumer Product Safety Commission (CPSC). Consequently, the use of MeCL2 and NMP in paint stripping is already more than adequately regulated under the Occupational Safety and Health Act and the Federal Hazardous Substances Act. OSHA regulates occupational exposure to MeCL2 emissions through a robust Permissible Exposure Limit (PEL) found at 29 C.F.R. § 1910.1052. EPA already limits MeCl2 emissions through, for instance, the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources found at 40 CFR § 63, Subpart HHHHHH. MeCl2 containing paint strippers available to consumers are already labeled in a manner that meets the requirements of the Federal Hazardous Substances Act.

In addition, State and local air quality agencies that regulate VOC content of products which restricts the amount of MeCl2 that is allowed in Paint Strippers. Together, these standards provide strict standards to protect employees, consumers and the environment. This comprehensive regulatory framework provides adequate protections with respect to the same potential adverse impacts and potential exposure pathways targeted by this rulemaking. Additional layers of bureaucracy under TSCA would lead to duplicative and unnecessary regulations. Taking steps that may lead to the removal of products from the marketplace because workers or consumers failed to comply with these existing requirements is not consistent with TSCA either as initially enacted or as revised.

At the Federal level, MeCl2 is classified by EPA as Hazardous Air Pollutants. EPA has promulgated numerous National Emission Standards for Hazardous Air Pollutants (NESHAP) that regulate the use of HAPs including MeCl2. In addition, EPA is currently in the process of reviewing NESHAP standards, and any revisions to these rules will likely further reduce the use of MeCl2.

NESHAPs include:

Surface Coating categories under Section 112 of the CAA (including shipbuilding, wood furniture, aerospace, fiberglass boat, metal coil, paper & other web, metal furniture, large appliance, wooden building, plastic parts, fabric coating, miscellaneous metal parts, auto & light duty truck, and metal can). These regulations include HAP limits and/or add-on control requirements and work practice standard to limit the evaporation of HAP including MeCl2. The standards have reduced the HAP content of industrial surface coatings, including MeCl2.

In addition, the NESHAP for Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources including those that perform paint stripping using methylene chloride (MeCl2) for the removal of dried paint (including but not limited to paint, enamel, varnish, shellac, and lacquer) from wood, metal, plastic, and other substrates at area sources. implement management practices that reduce emissions of MeCl2 by minimizing evaporative losses of MeCl2. The MeCl2 management practices involve only using a MeCl2-containing paint stripper when an alternative on site stripping method or material is incapable of accomplishing the work as determined by the operator. The management practices required also include optimizing stripper application conditions, reducing exposure of stripper to the air, and practicing proper storage and disposal of materials containing MeCl2. Owners and operators must also maintain records of annual usage of strippers containing MeCl2. In addition to the management practices, sources that use more than one ton of MeCl2 per year need to develop and implement a MeCl2 minimization plan. This must be a written plan including criteria to evaluate the necessity of MeCl2 in the stripping operations and whether alternatives are feasible. It must also describe the management techniques that will be used to minimize MeCl2 emissions when MeCl2 is needed in the paint stripping operation.

Flawed Risk Assessment

Congress amended Section 26 of TSCA in 2016 to require the agency to make well-informed regulatory decisions based on the best available science. EPA's proposal fails this requirement because it relied on a risk assessment for MeCl2 and NMP that are both substantively and procedurally flawed. Exposure to paint removers containing MeCl2 and NMP has been overestimated since EPA applied numerous worst-case and default assumptions that led EPA to overestimate potential risks from MeCl2 and NMP. Also, the exposure data relied on by EPA for the MeCl2 risk assessment are out of date, inappropriate and overstate the exposure and therefore the risks to consumers and DIY-users of paint removers. Further, the flawed risk assessment does not meet OMB's guidelines implementing Information Quality Act, and does not represent the "best available science."

EPA should not summarily reject viable and effective regulatory alternatives, including enhanced labeling, consumer education and training requirements for product users that will permit product manufacturers and formulators to manage potential risks to reasonable levels. EPA erroneously concluded that labels and warnings are ineffective. EPA implements many regulatory programs that rely effectively on labelling to prescribe uses and limitations and communicate risks. Review of accidents data do not indicate low rates of warning conformance. The incidence of MeCl2 and NMP "over exposure" cases is declining. There has been a significant downward trend in incidents or exposures reported to poison centers. The percentage of symptomatic patients as compared to all reported events has been declining. The small number of serious events are occupational or from intentional mis-use, and the decline in the number of reported incidents is not a result of decreased use of MeCl2 and NMP containing products. If most of the serious events are associated with bath tub refinishing, EPA should limit any bans to this use only, not all paint removal uses, or develop specific precautions for bath tub refinishing.

As documented in comments dated March 15, 2013 (attached), ACA believes that EPA has overstated the risk of exposure to MeCl2 and NMP by conducting a "worst case" scenario assessment. ACA has created a widely accepted and comprehensive industry labeling guide for products containing these paint strippers. This labeling guide includes label statements that provide users of MeCl2 and NMP with standards to limit dermal and inhalation exposure from MeCl2 and NMP. These label statements have become the accepted industry standard conditions necessary for safe use. In 1987, the Consumer Product Safety Commission (CSPC) conducted a review of ACA's labeling guide and concluded that these label statements met the standards of the Federal Hazardous Substance Act (FHSA), create conditions of safe use, and pose no risk for consumer exposure. Unfortunately, however, EPA has failed to consider these label statements and industry standard conditions when it conducted risk assessments for MeCl2 and NMP. Given the widely accepted industry labeling guide, ACA stresses that further regulatory action on MeCl2 and NMP is not needed.

ACA believes that EPA's use of 'worse case assessments' is a drastic over step and goes well beyond the standard of 'normal use.' ACA has created a labeling guide that serves to guide industry practice for hazard and precautionary warning labels. ACA and its membership understand the potential for exposure to consumers with MeCl2 and NMP and stresses that appropriate warnings for safe use of MeCl2 and NMP containing products is the responsibility of the manufacturer as it is in the best position to know and direct product conditions for use. Use of MeCl2 and NMP in commercial and industrial settings is maintained at a minimal level by use of proper personal protective equipment (PPE), and other safety precautions. EPA should not minimize the importance of engineering controls as well as PPE in mitigating exposure to a chemical, and thus minimizing its risk. ACA believes that label statements and associated recommended engineering controls and personal protective equipment (PPE) create an environment of safe use that limits the potential for dermal and inhalation exposure from MeCl2 and NMP.

Moreover, EPA states that the risk assessment for MeCl2 and NMP was focused on "exposures to workers employed by small commercial shops," which was defined as a shop employing less than 10 people. It is a reasonable assumption that workers using MeCl2 and NMP in small

commercial shops will be using MeCl2 and NMP in a manner consistent to the average consumer, albeit exposed for a shorter period of time. Accordingly, ACA believes that further action by the EPA on MeCl2 and NMP containing paint strippers is unnecessary and unwarranted.

Finally, ACA acknowledges the potential for inhalation and dermal exposure to MeCl2 and NMP. ACA's labeling guidance has created industry wide practice for the use of MeCl2 and NMP. For consumer products that contain MeCl2 and NMP, companies provide warning statements on product labels, along with instructions for safe use of the product. Providing information on product labels in clear, easy to understand language gives consumers the information they need to protect themselves from the chemical or physical hazards that may be associated with each product or its components, such as MeCl2 and NMP. This practice has long been accepted by the Consumer Product Safety Commission under the Federal Hazardous Substances Act. Application of the label's hazard and precautionary statements will create a 'normal use' scenario that has little to no potential for exposure to either chemical. EPA's risk assessments make unreasonable assumptions when using a 'worst case scenario.' ACA believes that EPA should conduct risk assessments under a 'normal use' scenario taking industry standard practice and precautions into account. Given that the CPSC has stated that the label statements for MeCl2 and NMP meet the requirements of the FHSA, it is evident that industry has clearly developed precautionary measures to ensure safe use of MeCl2 and NMP. Thus, there is no need for EPA to further regulate these chemicals.

If over ACA's objection, EPA does ban MeCl2 and/or NMP in paint removers, any NMP restrictions should be consistent with OSHA disclosure requirements (de minimus 1%) - If MeCl2 and/or NMP is an impurity or contaminant below 1%, then it should be exempt from recordkeeping/notification. Further, Safety Data Sheets should be allowed for notification purposes (as opposed to additional notification that could be very expensive).

Environment Canada Draft Screen Assessment: NMP

It is important to highlight the recent findings from a draft risk assessment published by Environment Canada (EC), focusing on NMP and NEP (1-ethyl-2-Pyrrolidone). In this Risk Assessment, Environment Canada evaluated NMP's ecological hazards, as well as NMP hazards associated with human health. Overall, EC determined that NMP poses a low ecological risk, based on anticipated emission levels. EC's results were inconclusive regarding NMP's effects on human health; as such, further monitoring may be necessary. However, Environment Canada did conclude that NMP "is not entering the environment in a quantity or concentration or under conditions that constitute or may constitute a danger in Canada to human life or health."

EPA Should Assess Risk of Aerosol Versus Liquid Paint Removers

The current proposal is to ban both liquid and aerosol paint removers containing MeCl2. This is partially based upon a misconception that delivery by aerosol will result in greater respiratory exposure. In the case of paint strippers just the opposite is true. Aerosol paint strippers do not create a fine mist. They spray a coarse wet pattern of very sticky droplets. These droplets do not bounce as fine high speed particles often do from other aerosols. Also, since the droplets are

large, they do not create a floating aerosol mist like that from an air freshener. Since MeCl2 is highly volatile, user exposure is correlated with the amount and duration of MeCl2 applied, not the method of application.

In addition, aerosol paint strippers are highly efficient and fast. They use smaller quantities of MeCl2 compared with liquid bulk paint strippers for the same job. Aerosols often include additional solvents with the MeCl2 to make a very fast and complete remover. The ease of aerosol application often makes the application time a fraction of the time necessary to apply a liquid with a brush. Thus, the total amount of MeCl2 used is less and the duration of the exposure is greatly reduced. For example, an antique chair may take 10 minutes to apply an aerosol stripper. The same chair may take 30 minutes or more for brush application. Activation time for the aerosol product is usually 15 minutes or less and can be wiped off easily with little waste. Liquids can take 30 minutes up to several hours before the paint is ready to be removed and it is often difficult to remove and creates a large amount of waste. Subsequent coats may be necessary.

The EPA Work Plan Chemical Risk Assessment for MeCl2 in Paint Stripping Section 3.2 Consumer Exposure, does not account for the differences in efficacy, application times, duration, or product volume. In fact, the concentration percentages of MeCl2 in bulk liquids and aerosol products used by EPA in Section 3.2.3.3 are not consistent with market reality. They are inverse and inaccurate compared with actual existing products.

Comparison of a Bulk Paint Stripper versus Aerosol Paint Stripper (Concentrations based upon actual product formulas)

- Bulk – 87% by weight MeCl2. Coverage = 0.78 sq. ft. / ounce. MeCl2equivalent = 0.89 sq. ft. per ounce

- Aerosol – 62% by weight MeCl2. Coverage = 1.6 sq. ft./ ounce. MeCl2equivalent = 2.68 sq. ft. / ounce.

The bulk or liquid product uses 2.9 times as much MeCl2to do the same job as the aerosol. When considered together, a MeCl2 aerosol remover quicker, has more complete removal, uses less MeCl2 for the same size job, and produces less waste. The user is exposed to 70-95 percent less MeCl2 when using an aerosol remover versus a traditional brush on liquid. EPA should assess the risk of aerosol versus liquid paint removers.

Research & Development (R&D) and Quality Assurance/Quality Control (QA/QC) Exemption - The coatings industry utilizes numerous R&D and QA/QC laboratories where coatings formulations are developed and QA/QC tested. These operations apply coatings on test substrate "coupons". Many of these laboratories use MeCl2 to remove any residual coating or contaminants from the substrate prior to coating application. This use is generally limited to situations where mechanical removal is not feasible such as aluminum substrates. These facilities conduct this work using appropriate PPE and engineering controls including vented laboratory hoods so the risk to workers is minimized or eliminated. Switching to alternative paint removers would be very burdensome to the coatings industry. It is important to note that EPA

has included R&D and QA/QC exemptions in many of the air quality regulations (including NESHAPs).

EPA NMP Proposal 2 - Continued Use with Requirements for Product Reformulation, Labeling, and PPE

ACA appreciates that EPA has included a second option for NMP that would allow continued use with requirements for labeling and PPE, however ACA does not support the 35% by weight reformulations limitation.

If EPA allows for continued use of NMP in paint removers, any NMP restrictions should be consistent with OSHA disclosure requirements (de minimus 1%) - If NMP is an impurity or contaminant below 1%, then it should be exempt from recordkeeping/notification. Further, Safety Data Sheets should be allowed for notification purposes (as opposed to additional notification that could be very expensive).

Glove Testing Concerns

Glove testing for processors of formulated products with 1% variability is overly burdensome. Even if a formulation differs only by 1% NMP, each formulation can have different solvents other than NMP and the glove identified may or may not be appropriate for the two formulations - this is a costly process imposed on the processors and the possible outcome is that the glove material selected may not be protective. This is a dangerous precedent to set when the end result may not be what is anticipated based on the requirement. The glove manufacturer has standardized testing that uses maximum saturation contact and therefore the results of tested gloves as supplied to the glove manufacturer should be adequate. Since these formulations can no longer be supplied for consumer use and are only for commercial use, it is the responsibility of the employer under OSHA to specify correct protective equipment and not the burden of the manufacturer to determine appropriate glove use - the burden of the manufacturer to identify the appropriate glove material is a redundancy to the expectations of OSHA for occupational exposures. The processor cannot identify and/or anticipate the conditions of exposure including the likely combinations of chemical substances to which the gloves may be exposed. If the products are used in a commercial setting (if NMP is banned from consumer products), it should be the burden of the employer (as covered under the OSHA regulations) to identify the appropriate PPE based on a hazard/risk assessment of the activities)

Additional Comments on NMP Proposal 2

Section 751.205(a) ***Processors***: ... must not be manufactured, processed or distributed ...
ACA suggests the word "processors" be removed since it appears that EPA considers processors as manufacturers, processors or distributors.

Section 751.205(a)(3) Labeling - Labeling could be problematic for small containers if ALL the information must appear on the label (e.g., various statements, specific PPE). Most product

labels are already filled with language required by various regulations. Manufacturers will have difficulty fitting the additional language required in Section 751.205(a)(3).

Conclusion

As stated earlier, ACA suggests that the proposed rule is fundamentally flawed since EPA's proposal to ban MeCl2, and either ban or significantly restrict the use of NMP, will devastate industries and force consumers to choose between alternatives that are less effective; that can present health and environmental risks (that EPA has not assessed and underestimated); and that are more costly to use. It is very important to note that not only is EPA proposing to ban arguably the most effective paint stripper - MeCl2, but also ban or significantly restrict the use of arguably the best replacement for MeCl2 - NMP. Further, this proposal would duplicate regulations that are already in place, and therefore is not needed. The proposal also relies on scientifically and procedurally flawed risk assessment that violates Office of Management and Budget ("OMB") guidelines for major scientific rulemakings. EPA should withdraw this flawed proposal, and consider instead a more modest and effective regulatory approach based on improved labeling and consumer education.

ACA appreciates that EPA has included a second option for NMP that would allow continued use with requirements for labeling and PPE and ACA supports this option, however ACA does not support the 35% by weight reformulations limitation.

ACA supports the comments submitted by W.M. Barr & Company, Sunnyside Corporation, the Halogenated Solvents Industry Alliance, Inc. (HSIA), and the American Chemistry Council.

We appreciate the opportunity to provide our comments on the Risk Evaluation Proposed Rule. We look forward to working with EPA during the LSCA Implementation process. Please let me know if you have any questions.

Respectfully Submitted,

/s/

David Darling, Vice President, Health, Safety, and Environmental Affairs